

APPLICANTS:
Stephen & Karen Tracey

**REQUEST: A variance pursuant to
Section 267-26C to allow an existing detached
garage within the required front yard setback**

HEARING DATE: October 27, 2004

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5448

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Stephen & Karen Tracey

LOCATION: 1811 Parkwood Drive, Parkwood Subdivision, Forest Hill
Tax Map: 39 / Grid: 2B / Parcel: 453 / Lot: 14
Fourth Election District

ZONING: RR/ Rural Residential

REQUEST: A variance pursuant to Section 267-26C of the Harford County Code,
to allow an existing detached garage within the required front yard
setback in the Rural Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified Stephen Tracey. Mr. Tracey stated that he and his wife have lived on the subject property for about three and one-half years. In June 2004, their contractor completed construction of a 26 foot by 28 foot detached garage. The garage is similar in style and materials to their existing single-family home. The garage was to be used for personal vehicles. No business use was intended, nor will be made of the garage. The Applicants also intend to store yard tools and supplies in the garage.

Mr. Tracey described his property as being virtually surrounded by 20 to 25 foot pine trees, which line much of the periphery of his one-acre parcel. Those pine trees screen the existing garage from both Parkwood Drive and adjacent properties.

Mr. Tracey stated that his property is a corner lot. The swimming pool and the other improvements on the property have been there for some years. The swimming pool is located behind the house, where the septic reserve area is also located. As a result of these features, it is impossible for the Applicants to build a garage in that area.

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Mr. Tracey further emphasized that the lot directly across Parkwood Drive from the Applicants' property is encumbered by Colonial Pipeline right-of-way, which causes the house on that lot to be setback greater than normal from Parkwood Drive and, accordingly, from the Tracey property. Mr. Tracey believes that the location of the pool and septic reserve area, the Colonial Pipeline right-of-way, and the significantly sized trees around his property make the Applicants' parcel unique.

Mr. Tracey testified he had prepared the site plan for the garage, which was submitted to Harford County along with his contractor's request for a building permit. Mr. Tracey measured the location of the footprint of the garage from his curb, believing that his curb was his property line. However, Mr. Tracey's measurement was incorrect. The curb is not his property line. In fact, his property line begins approximately ten (10) feet in from the curb. This is not apparent to the naked eye. As a result, the garage for which a permit was approved was laid out partially within the front yard setback. To exacerbate matters, the builder tilted the garage placement, so the garage is an additional two (2) feet closer to Parkwood Drive. This was done without the knowledge or consent of Mr. Tracey.

It was not until June 2004, when the garage was virtually complete, that Mr. Tracey was first made aware the garage violated the front yard setback by about 12 feet. He discovered this by way of a notice from the Harford County Department of Planning & Zoning, which had, apparently, received a complaint. At that time the garage was virtually complete, having cost about \$19,000.00.

The Applicant stated that there was no other practical location on this property to build the detached garage.

The Applicants have consulted all of their neighbors about the proposed variance. No neighbor has expressed any objection. Mr. Tracey feels there would be no adverse impact on the neighborhood from the garage, and it would not impact any existing sight lines. A number of other homes in the neighborhood also have attached garages.

Next for the Department of Planning and Zoning testified Anthony McClune. In Mr. McClune's opinion, and that of the Department, the property is unique. There is no uniform streetscape along Parkwood Drive; the homes are set back varying distances from the street. This results in the Applicants' garage, even though it impacts the front yard setback, being consistent with the other construction in the neighborhood.

Furthermore, according to Mr. McClune, the existing trees are almost 30 feet in height and virtually fully screen the garage and other improvements on the property. The proposed variance would have no impact on the neighborhood.

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Mr. McClune also indicated that because of the distance between the curb and the actual front line of the lot, the fact that the garage impacts the front yard setback is impossible to detect unless one were specifically aware of the location of the lot line.

Mr. McClune believes that the Applicants' situation is a result of inadvertent mistakes and believes that the variance is a reasonable request.

There was no testimony or evidence presented in opposition. Included in the file are statements from the neighbors indicating their lack of opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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Harford County Code Section 267-26C(4) provides:

“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The property of the Applicants’ is unusual in that it is both a corner lot and is screened by mature trees almost 30 feet in height. The front lot line is actually setback 10 feet or more from the existing curb. The Applicants’ 40 foot front yard setback is, in effect, 50 feet when one measures from the curb back.

Due to understandable inadvertence, the Applicants’ agent located the garage in an improper position, being approximately 10 feet within the front yard setback. This mistake was exacerbated by the builder’s apparent error in slightly adjusting the location of the garage foundation, resulting in an additional impact to the setback by two (2) feet.

It is accordingly found that the location of the lot, the height of screening trees, and the existing actual setback from Parkwood Drive, contribute to create a unique situation. Without the variance, the Applicants would obviously suffer a hardship in having to relocate the garage, at a substantial expense. The proposed variance is the minimum relief necessary to eliminate that hardship. The variance would have no adverse impact on the neighborhood. Indeed, it could be found that the construction of such a substantial detached garage would benefit property values in the neighborhood.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted, subject to the following:

1. The Applicants shall amend the existing permit to accurately reflect the location of the garage.
2. The garage shall not be used for the storage of contractor’s equipment and/or commercial vehicles.
3. The garage shall not be used in the furtherance of a business.
4. The garage shall not be converted into living quarters.

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5. The garage shall not be attached to the existing dwelling.
6. The Applicants shall maintain the existing trees around the garage.

Date: December 3, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner